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## Submitter Information

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## General Comment

In the early 2000s, the music industry was shocked when Internet users started sharing copyrighted works through peer-to-peer networks such as Napster. Software such as Napster made it very easy for people with digital copies of recorded music to share these digital copies with other users. The industry reacted by suing Napster and users of the software that allowed the digital sharing. While the industry's lawsuits seemed like a reasonable reaction to this epidemic, it should have immediately established an online marketplace for digital music. Eventually, Apple did address the issue by releasing iTunes. Since the introduction of iTunes, the recording industry has seen a rise in profits. Users are willing to pay for digital music as long as there is access.

However, these digital downloads from legal marketplaces are not actually sales; the purchases are actually licenses to the music. This means that a user who purchases a song cannot resale the song in a secondary marketplace because the first sale exception does not apply to licensed material. Courts have given the software and recording industry great power to control their copyrighted work, but it seems ridiculous that a user who purchases a song cannot sell their song when they no longer care to listen to it. The problem for the recording industry lies in the fact that the digital recording of the work is very easy to copy and transfer. If sales in the secondary market were allowed, one could easily make a digital copy then make then resale the original. It is very hard to track whether a copy of the work is still located on a hard drive, cloud, or other storage device. While the technology may not exist yet, I feel that it would not be difficult to establish some way to track the digital copying of music so that a secondary market in the digital environment could exist. Additionally, the recording industry could adapt their licensing to be conducive to secondary sales.

Another problem arises in digital music with regards to "mashups" or "remixes" of songs by users. These types of work are created by "sampling" pieces of a work or a number of works and putting these pieces together to form a new work. This practice brings about difficult legal issues. Should the creator of one of these remixes be required to get a licenses from every work sampled? Under the current law, the answer is yes. However, a recent trend has showed that the recording industry does not always pursue somebody who illegally infringes by sampling protected work. For example, the mashup artist, Girl Talk, recently released an album with over 300 different samples of copyrighted work. He has not been sued once. This could be attributed to the cost of litigation or the exposure the original artists have received. While what he does is actually illegal, the industry has not sought any legal remedies. This obviously needs to be addressed by either new licensing mechanisms or copyright policy.

Currently, if a website hosts infringing content, then the copyright holder must send a takedown notice to the website owner. This becomes burdensome for the copyright holder and the website owner because it is very resource intensive. A copyright holder might have to send multiple take

down notices to the same website for the same content. YouTube, a popular online video sharing website, has addressed this issue by creating a content ID system. If a user uploads infringing material to YouTube, the website has a mechanism to detect this infringing material and automatically take it down. Some industries have allowed user to upload copyrighted material by using intermediary licensing practices. This gives a user the freedom to upload copyrighted content and benefits the copyright holder by generating interest in the content. One example of this is the Creators of the popular animated TV series South Park allow users to upload parts of the show. This benefits the owners because these videos get shared and create interest in the show. A new policy that could extend this practice to other industries would be beneficial to all parties involved.

When it comes to copyrights in the digital age, there are a number of issues that need to be addressed. The people involved need to consider everyone when adopting new policy. While the right holders might have the most money at stake, the users and the public need to be heard too. The Electronic Frontier Foundation and the Creative Commons are great representatives for the rights of the individuals when it comes to the new policy. I hope that the Department of Commerce will address everyone's concerns and craft a new policy that will continue to promote creativity by all artists in the digital revolution while also helping to stimulate the digital economy and create jobs without hindering individual rights.